

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

V.

EMILIAN MADALIN NITA,

Defendant.

CASE NO. CR12-5075 BHS

ORDER DENYING MOTION FOR RETURN OF PROPERTY

This matter comes before the Court on Defendant Emilian Madalin Nita's ("Nita")

motion for return of property (Dkt. 44).

On June 5, 2012, Nita plead guilty to one count of wire fraud. Dkt. 34. On

September 24, 2012, the Court sentenced Nita, which included \$1,537,293 in restitution.

Pkt. 42. On March 1, 2013, Nita filed the instant motion requesting that the Government

return various items including two watches seized during investigation of the crime. Dkt.

44. On March 8, 2013, the Government responded and states that it "has agreed to return

all property requested that is not contraband, except for the watches." Dkt. 45. Therefore,

1 the Court denies Nita's motion as moot as to all described property, except for the
2 watches.

3 Although a defendant has the right to the return of property seized as evidence
4 once the evidence is no longer needed, the government may retain the property if it can
5 demonstrate that it has "a legitimate reason to retain the property." *United States v.*
6 *Marinson*, 809 F.2d 1364, 1369 (9th Cir. 1987). If the government can show that it has a
7 "cognizable claim of ownership or right to possession adverse to that of [the defendant],"
8 the government may have a legitimate right to the defendant's seized property. *United*
9 *States v. Palmer*, 565 F.2d 1063, 1965 (9th Cir. 1977). A valid restitution order gives the
10 government a sufficient cognizable claim of ownership if the property in question is
11 needed to satisfy the terms of the restitution order. *United States v. Mills*, 991 F.2d 609,
12 612 (9th Cir. 1993).

13 In this case, the Government has shown that it may retain the watches. There
14 exists a valid restitution order for a considerable sum of money, and the watches are
15 needed to satisfy the terms of that order. Therefore, the Court **DENIES** the remainder of
16 Nita's motion for return of property.

17 Dated this 25th day of March, 2013.

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BENJAMIN H. SETTLE
United States District Judge